

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00

EB-07 FRB-03 H-02 INR-07 INT-05 L-03 LAB-04 NSAE-00

NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04 TAR-01

TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01 IO-10

XMB-02 /104 W

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R 231811Z DEC 75

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 220

INFO ALL EC CAPITALS 1482

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E.O. 11652: N/A

TAGS: ETRD, OECD, EEC

SUBJECT: OECD GOVERNMENT PROCUREMENT CODE AND THE EC

REFS: A. OECD PARIS 32544, B. OECD PARIS 32388, C. EC BRUSSELS 10667

D. EC BRUSSELS 9973, E. EC BRUSSELS 9356

1. SUMMARY. THE EC ART. 113 COMMITTEE ON DEC 16 DISCUSSED TREATMENT OF THIRD COUNTRY GOODS FOLLOWING PASSAGE OF THE EC DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT. THE FRENCH AND ITALIANS INSISTED THAT SUCH GOODS BE EXCLUDED FROM THE OPEN GOVERNMENT PROCUREMENT PROVISIONS IN THE DRAFT DIRECTIVE. DERISBOURG DISCUSSED WITH US THE EC POSITIONS ON SEVERAL ISSUES TAKEN UP AT THE DEC OECD WORKING GROUP MEETING ON GOVERNMENT PROCUREMENT. HE THOUGH IT WOULD BE USEFUL FOR A US-EC MEETING TO SEARCH FOR SOLUTIONS TO OUTSTANDING ISSUES. END SUMMARY.

2. ON DEC 23 WE MET WITH JEAN-PIERRE DERISBOURG, THE EC COMMISSION'S REPRESENTATIVE TO THE OECD TRADE COMMITTEE WORKING PARTY ON GOVERNMENT PROCUREMENT, TO GET A RADING ON THE EC  
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ARTICLE 113 COMMITTEE MEETING WHICH TOOK PLACE ON DEC 16 (SEE

REFTEL B) AND TO DISCUSS THE DEC 8-12 OECD WORKING PARTY, (SEE REFTEL A).

3. DERISBOURG SAID THE 113 COMMITTEE MEETING WAS DEVOTED TO THE ISSUE OF HOW THIRD COUNTRY GOODS IN FREE CIRCULATION WITHIN THE EC WILL BE TREATED DURING THE PERIOD WHEN THE EC DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT IS OPERATING AND BEFORE AN INTERNATIONAL AGREEMENT, (I.E., OECD OR GATT GOVERNMENT PROCUREMENT CODE), COMES INTO EFFECT. (SEE REFTELS D AND E) THE ITALIANS AND FRENCH ARGUED STRONGLY THAT UNTIL THERE IS AN INTERNATIONAL PROCUREMENT CODE THERE SHOULD BE NO AMBIGUITY, THIRD COUNTRY GOODS SHOULD BE EXCLUDED FROM THE LIBERALIZED EC GOVERNMENT PROCUREMENT PROCEDURES. THE FRENCH DROPPED THEIR IDEA FOR AN INDICATIVE LIST OF EXCLUDED GOODS BASED ON ART. 115 (SEE REFTELS D AND E). THEY AND THE ITALIANS SAID THAT THERE SHOULD BE A DECISION BASED ON ART. 113 FLATLY EXCLUDING THIRD COUNTRY GOODS FROM THE DIRECTIVE, ALTHOUGH COUNTRIES WISHING NOT TO DISCRIMINATE AGAINST THIRD COUNTRY GOODS (I.E., GERMANY, DENMARK) WOULD BE FREE TO DO AS THEY WISHED. THE COMMITTEE OF PERMANENT REPRESENTATIVES (COREPER) WILL GET BACK TO THIS ISSUE IN LATE JAN OR EARLY FEB, AND DERISBOURG PERSONALLY BELIEVES THAT THE FRENCH/ITALIAN POSITION WILL WIN OUT OVER GERMAN/DUTCH OPPOSITION.

4. DERISBOURG EXPLAINED THAT UNDER ART. 115 THE COMMISSION MAY GIVE RELATIVELY LIMITED EXCEPTIONS TO THE PRINCIPLE OF FREE CIRCULATION (E.G., A MEMBER STATE MAY DISREGARD FREE CIRCULATION RULES FOR X MONTHS FOR A GIVEN INDUSTRIAL SECTOR). UNDER ART. 113, AS PART OF THE COMMON COMMERCIAL POLICY, AN EC-WIDE DEROGATION MAY BE GRANTED. DERISBOURG SAID THAT SINCE SUCH A DEROGATION VIOLATES THE BASIC PRINCIPLE OF FREE CIRCULATION IT POSES PROBLEMS FOR THE COMMISSION.

5. DERISBOURG THEN WENT ON TO DISCUSS THE OECD WORKING PARTY'S DEC MEETING. DERISBOURG COULD NOT SAY MUCH ABOUT THE PROSPECTS FOR THE TRADE COMMITTEE MEETING BECAUSE HE HAD NOT YET HAD A CHANCE TO DISCUSS THE WORKING PARTY MEETING WITH FERNAND BRAUN OR THEO HIJZEN. HE THOUGHT THE TRADE COMMITTEE MIGHT PROVIDE USEFUL ORIENTATION ON DISPUTES SETTLEMENT AND THE GATT/LDC PROBLEM. ON THE LATTER POINT DERISBOURG THOUGHT THAT IF AT THE MARCH/APRIL MEETING OF THE MTN GROUP ON NON-TARIFF MEASURES INDIA WOULD ASK LIMITED OFFICIAL USE

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THAT A SUB-GROUP BE ESTABLISHED ON GOVERNMENT PROCUREMENT, THE EC WOULD NOT OPPOSE THE IDEA. EVEN WITH SUCH A SUB-GROUP HE THOUGHT WORK COULD CONTINUE IN THE OECD.

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6. REGARDING THE WORKING GROUP'S DISCUSSION OF THE EC'S PROPOSAL ON SURVEILLANCE AND DISPUTES SETTLEMENTS, DERISBOURG SAID THE QUESTIONS OF THE US REPRESENTATIVE WERE WELL TAKEN. HE SAID THAT THE EC'S POSITION WAS A BARE BONES OUTLINE THAT HAD TO BE ELABORATED. FOR EXAMPLE, ALTHOUGH IT POSED PROBLEMS FOR THE NON-EC COUNTRIES, HE THOUGHT THE US AND EC COULD HAVE PERMANENT MEMBERSHIP ON THE SUB-COMMITTEE SUGGESTED BY THE EC IN ITS PROPOSAL. DERISBOURG SAID CERTAIN MEMBER STATES (E.G., FRANCE) WILL NOT ACCEPT COMPULSORY ARBITRATION OF DISPUTES SETTLEMENT. NEVERTHELESS, HE SAID THE EC WAS OPEN TO EXPLORING WAYS TO PROMPT DISPUTING SIGNATORIES TO RESORT TO ARBITRATION. HE SAID HE WOULD NOT EXCLUDE THE POSSIBILITY OF INCLUDING LANGUAGE REQUIRING A SIGNATORY STATE REFUSING ARBITRATION TO BE REQUIRED TO JUSTIFY ITS REFUSAL.

7. DERISBOURG APPRECIATED THE DILEMMA POSED BY THE THRESHOLD AMOUNT FOR CONTRACTS. A LOW THRESHOLD HAD ADVANTAGES. IT WOULD REQUIRE DEROGATIONS BUT THEY COULD BE TIGHT. HOWEVER, THE EC COULD NOT ADMINISTRATIVELY HANDLE THE PUBLICATION OF THE VASTLY INCREASED NUMBER OF CONTRACTS INVOLVED WITH A LOW THRESHOLD.

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ON THE OTHER HAND, A HIGH THRESHOLD WOULD ELIMINATE THE NEED FOR DEROGATIONS BUT WOULD MEAN THE JAPANESE, WITH THEIR SMALL BUSINESS PREFERENCE, WOULD NOT REALLY BE OPENING UP THEIR GOVERNMENT MARKET. DERISBOURG SAID THE EC'S THRESHOLD PROPOSAL WAS DESIGNED TO GET AROUND THE DILEMMA, BUT MORE THOUGHT NEED BE GIVEN TO THE PROBLEM.

8. REGARDING THE EC'S IDEA ON A LISTING OF CIVILIAN GOODS PURCHASED BY DEFENSE DEPARTMENTS THAT WOULD BE OPENED UNDER THE CODE, DERISBOURG SAID THIS WAS BASICALLY AN ISSUE FOR THE US AND EC. HE THOUGHT THE TWO SIDES SHOULD TALK IT OVER.

9. DERISBOURG SAID THAT THE EC WOULD NOT AGREE UNDER ANY CIRCUMSTANCES TO EX-POST PUBLICITY ON SPECIFIC CONTRACTS. SUCH INFORMATION COULD BE EXCHANGED BETWEEN GOVERNMENTS IN A DISPUTE, BUT THIS INFORMATION COULD NOT BE MADE PUBLIC. HE SAID THE EC COUNTRIES WERE, HOWEVER, PREPARED TO PROVIDE EX-POST STATISTICS ON A REGULAR BASIS BY SECTORS AND PURCHASING AGENCIES TO ASSURE THE INTEGRITY OF THE SYSTEM.

10. DERISBOURG WANTED TO KNOW THE US VIEW ON TREATMENT OF THE LDCS. HE SAID HE SAW THREE POSSIBILITIES:

A) KEEP THE LDCS OUTSIDE THE AGREEMENT BUT GIVE THEM ADVANTAGES;

B) LET THEM BECOME PARTIES TO THE AGREEMENT BUT GIVE THEM A WIDE DEROGATION;

C) LET THE LDCS BECOME ASSOCIATE MEMBERS WITH SOME ADVANTAGES AND NOT ALL OF THE CODE'S OBLIGATIONS.

DERISBOURG DOES NOT LIKE THE SECOND ALTERNATIVE.

11. DERISBOURG AGREED THAT IT WOULD BE USEFUL TO HAVE A US-EC MEETING SOME TIME AFTER THE TRADE COMMITTEE MEETING SO THAT OUTSTANDING DRAFT CODE ISSUES MIGHT BE EXPLORED IN DEPTH. ALTHOUGH THE SUBJECTS COVERED WOULD BE MORE EXTENSIVE IF THE EC HAS BY THEN AGREED ON ITS DRAFT DIRECTIVE, SURVEILLANCE AND DISPUTES SETTLEMENT, TREATMENT OF LDCS, STATISTICS AND OTHER ISSUES COULD BE PROFITABLY DISCUSSED EVEN BEFORE THE COUNCIL LIMITED OFFICIAL USE

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APPROVES THE DIRECTIVE.

12. DISPUTE THE PUBLIC POSITION TAKEN BY DERISBOURG AT THE WORKING GROUP MEETING (SEE REFTEL A) DERISBOURG TOLD US THAT THE EC IS SINCERELY LOOKING FOR SOLUTIONS TO OBVIOUSLY COMPLICATED PROBLEMS AND IS PREPARED TO MOVE TOWARD REASONABLE COMPROMISES. HE FEELS

THAT THE POSSIBILITY FOR SUCH COMPROMISES WOULD BE ENHANCED  
BY A ONE OR TWO DAY MEETING BETWEEN THE US AND THE EC. GREENWALD

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## Message Attributes

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